

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOEL CHRISTOPHER HOLMES,

Petitioner,

v.

ROBERT FERGUSON,

Respondent.

CASE NO. 3:20-cv-05718-BJR-JRC

ORDER FOR SUPPLEMENTAL  
BRIEFING

This matter is before the Court on referral from the District Court and on petitioner's petition for writ of habeas corpus under 28 U.S.C. § 2254. *See* Dkt. 11.

Respondent asserts that the Court lacks subject matter jurisdiction over the petition because petitioner was not "in custody" within the meaning of 28 U.S.C. § 2254 when he filed the petition. Dkt. 17, at 5. In response, petitioner draws the Court's attention to his August 23, 2018 Thurston County Felony Judgment and Sentence, specifically the sentencing court-imposed requirement that he "comply with Pioneer Human Services counseling and housing rules." Dkt. 18-1, at 8, *cited in* Dkt. 19. Respondent does not address the significance of this requirement in the Answer (Dkt. 17, at 6–9), and respondent did file a reply to petitioner's response in

1 opposition to the Answer. Accordingly, the Court finds that additional briefing would be of  
2 assistance.

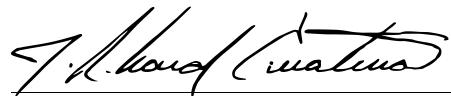
3 Therefore, the Court **ORDERS** respondent to file supplemental briefing addressing the  
4 following issue:

5 Whether the requirement in petitioner's Thurston County judgment and sentence  
6 that petitioner "comply with Pioneer Human Services counseling and housing  
7 rules" renders him "in custody" for the purpose of a challenge to his conviction for  
8 promoting a suicide attempt, under the principles set forth in *Dow v. Circuit Court  
of First Circuit Through Huddy*, 995 F.2d 922 (9th Cir. 1993) and similar cases.  
See Dkt. 18-1, at 2.

9 Respondent's brief shall not exceed 5 pages, double-spaced, and is due on or before  
10 December 18, 2020. Petitioner may—but is not required to—file a response to respondent's  
11 supplemental brief. Petitioner's brief, if he files one, shall not exceed 5 pages, shall not raise  
12 issues other than those identified in this Order and in respondent's supplemental brief, and shall  
13 be filed on or before January 15, 2021. The parties may also attach exhibits or evidence in  
14 support of their briefing, if relevant to the issue identified above.

15 The Clerk's Office shall send a copy of this Order to petitioner and shall renote the  
16 Answer (Dkt. 17) for consideration on January 15, 2021.

17 Dated this 4th day of December, 2020.

18  
19  
20 

21 J. Richard Creatura  
22 United States Magistrate Judge  
23  
24